



Court File No. CV-24-00000019-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE J.S. RICHARD)
WEDNESDAY, THE 16TH DAY
OF OCTOBER, 2024

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

and

1000108549 ONTARIO INC. AND NOORALLAH NAWROZADA

Defendants

MOTION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by Albert Gelman Inc. (“**AGI**”), in its capacity as the Court-appointed receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of 1000108549 Ontario Inc. (the “**Debtor**”) for an order approving the sale and transfer (the “**Transaction**”) of the real properties municipally known as (i) 219 Rorke Avenue, Haileybury, Ontario and (ii) 456 Albert Street, Haileybury, Ontario, and as legally described in Schedule B hereto (together, the “**Real Property**”) contemplated by an agreement of purchase and sale (the “**Purchase Agreement**”) between the Receiver and Babit Julka, in trust for 1001029685 Ontario Inc. dated August 15, 2024 and appended in redacted form to the first report of the Receiver dated October 3, 2024 (the “**First Report**”), and included, in unredacted form, as a confidential appendix to the First Report (the “**Confidential Appendix**”), and vesting in 1001029685 Ontario Inc. (the “**Purchaser**”) all of the Debtor’s right,

title and interest in and to the Real Property, was heard this day by Zoom judicial video conference.

ON READING the Motion Record of the Receiver, including the First Report (and appendices thereto) and the Confidential Appendix, and on hearing the submissions of counsel for the Receiver, and those other parties listed on the counsel slip, and no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Daisy Jin sworn October 4, 2024, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein have the meaning ascribed to them in the Purchase Agreement.

APPROVAL AND VESTING

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Real Property to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Real Property described in the Purchase Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens,

executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order of the Honourable Justice S. K. Stothart dated March 8, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Real Property are hereby expunged and discharged as against the Real Property.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office (NO. 54) for the Land Titles Division of Timiskaming of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Real Property identified in Schedule B hereto in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Real Property shall stand in the place and stead of the Real Property, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Real Property with the same priority as they had with respect to the Real Property immediately prior to the sale, as if the Real Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Real Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

9. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order and is enforceable without the need for entry or filing.



Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-24-00000019-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

and

1000108549 ONTARIO INC. AND NOORALLAH NAWROZADA

Defendants

MOTION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice S. K. Stothart of the Ontario Superior Court of Justice (the “**Court**”) dated March 8, 2024, Albert Gelman Inc. was appointed as the receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of 1000108549 Ontario Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated October 16, 2024, the Court approved the agreement of purchase and sale dated August 15, 2024 (the “**Purchase Agreement**”) between the Receiver and Babit Julka, in trust for 1001029685 Ontario Inc. and provided for the vesting in 1001029685 Ontario Inc. (the “**Purchaser**”) of the Debtor’s right, title and interest in and to

the Real Property, which vesting is to be effective with respect to the Real Property upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Real Property; (ii) that the conditions to closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction contemplated by the Purchase Agreement (the “**Transaction**”) has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Real Property payable on the closing date pursuant to the Purchase Agreement;
2. The conditions to closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

ALBERT GELMAN INC., in its capacity as Receiver of the undertaking, property and assets of 1000108549 Ontario Inc., and not in its personal capacity

Per: _____
Name:
Title:

Schedule “B” – Real Property

Legal Description of 219 Rorke Avenue, Haileybury, Ontario:

PCL12613 SEC SST; LT 95-99 PL M48NB BUCKE; TEMISKAMING SHORES: DISTRICT OF TIMISKAMING

Legal description of 456 Albert Street, Haileybury, Ontario:

PCL 23350 SEC SST; PT LT 188 PL M48NB BUCKE; PT LT 189 PL M48NB BUCKE; PT LT 190 PL M48NB BUCKE PT 1 54R3008; TEMISKAMING SHORES ; DISTRICT OF TIMISKAMING

Schedule “C” – Claims to be deleted and expunged from title to Real Property

1. Instrument No. DT83808 registered on August 26, 2022, being the first Charge/Mortgage from 1000108549 Ontario Inc. in favour of The Toronto-Dominion Bank, securing the sum of \$4,340,000.
2. Instrument No. DT83809 registered on August 26, 2022, being a Notice of Assignment of Rent – General from 1000108549 Ontario Inc. in favour of The Toronto-Dominion Bank, relating to DT83808.
3. Instrument No. DT88421 registered on August 18, 2023, being the second Charge/Mortgage from 1000108549 Ontario Inc. in favour of Syed Fazil Abbas, securing the sum of \$250,000.

**Schedule “D” – Permitted Encumbrances, Easements and Restrictive Covenants related to
the Real Property (unaffected by the Vesting Order)**

General Encumbrances

1. The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any royalties, mines and minerals in the Crown or in any other person.
2. Subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements with governmental authorities or private or public utilities affecting the development or use of the Real Property.
3. Rail siding agreements or facility, cost sharing, servicing, reciprocal use or other similar agreements.
4. Any easements, servitudes, or rights-of-way in favour of any governmental authority, any private or public utility, any railway company or any adjoining owner.
5. Any unregistered easements, servitudes, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Real Property.
6. Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable law.
7. Encumbrances for real or immovable property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Real Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on closing.
8. Restrictive covenants, private deed restrictions and other similar land use control agreements.
9. Minor encroachments by any buildings on the Real Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Real Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners.
10. The provisions of all applicable laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Real Property.
11. The exceptions and qualifications contained in Section 44(1) of the Land Titles Act (Ontario) (other than paragraphs 4, 6 and 11).
12. Security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Real Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the

Real Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Real Property.

13. Permits, licenses, agreements, servitudes, easements, (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, options, rights-of-way, public ways, rights in the nature of an easement or servitude and other similar rights in land granted to or reserved by other persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) (other than those described in paragraph (d) and (e) of this Schedule) which do not materially impair the current use, operation or marketability of the Real Property.

14. Undetermined or inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Real Property or of which notice in writing shall not at the time have been given to the Seller pursuant to the Construction Act (Ontario) or similar legislation, and in respect of any of the foregoing cases, the Seller has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts.

15. Any reference plans or plans registered pursuant to the Boundaries Act (Ontario).

16. Any unregistered interests in the Real Property of which the Purchaser has actual notice.

17. All rights of first refusal, option to purchase or similar rights relating to the Real Property.

Specific Encumbrances

Nil.

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**1000108549 ONTARIO INC. AND NOORALLAH
NAWROZADA**
Defendants

Court File No. CV-24-00000019-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN HAILEYBURY

APPROVAL AND VESTING ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street
Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett (LSO# 61044N)

Tel: (416) 865-3406

Email: kplunkett@airdberlis.com

Samantha Hans (LSO# 84737H)

Tel: (437) 880-6105

Email: shans@airdberlis.com

Lawyers for the Receiver